

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3929 OF 1996

N.V.Jhaveri & Ors. .. Petitioners.

Vs

P.S.Seksaria & Ors. .. Respondents

None for the parties.

CORAM : D.B.BHOSALE, J.

DATE : 13.12.2005.

PC:

1. None appears for the parties.

2. This Court, while admitting the writ petition on 9.8.1996, passed the following order:

1. Rule. Respondents herein waive service.

2. In this matter, the short point involved in this writ petition at interim stage is whether the petitioner herein is entitled to unconditional stay of the impugned order and if so whether the petitioner can seek possession. In view of the Judgments of the SC reported in 1995(1) SCC Page 6 and 1996 (3) SCC page 154 (applicability of which to facts of this case is also one of the issues in this W.P.), the petitioners herein are directed to move an application under O.21 rule 97 and on such application being served on the respondents, the appellate Court will adjudicate the matter subject to the rights of the parties to go in appeal. However, in the said application the

Execution Court will not be bound by prima facie observations made in impugned order and to that extent the impugned orders are stayed. Learned counsel for the respondents nos 1,2,3, 5 and 6 state that they are in exclusive possession. Pending the above adjudication the said respondents will not induct any third party into possession or create any further rights in property. Executing Court (if possible) will decide the matter within 31.12.1996."

3. Looking to the nature of the order that was passed at the time of admission, parties seem to have lost interest in the writ petition. It appears that the executing court must have disposed of the matter as directed by the aforestated order. The office noting shows that the advocate for the petitioners has not taken any steps within the stipulated period for effecting service on respondent nos 4 to 15 and hence, the writ petition came to be dismissed against respondent nos 4 to 15 by the self operative order of the Addl.Registrar. No application for restoration of the writ petition against respondent nos 4 to 15 is filed till this date. This further shows that the petitioners have lost interest in prosecuting this writ petition. The writ petition is, therefore, dismissed for nonprosecution.

(D.B.Bhosale, J.)